(1)

Supreme Court, U.S.
FILED

00-237 MAY 26 2000

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

BOBBY J. ARMSTRONG AND DELPHINE JONES ARMSTRONG - PETITIONER

VS.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
NORTHERN DISTRICT OF GEORGIA. ATLANTA DIVISION

PETITION FOR WRIT OF CERTIORARI

BOBBY J. ARMSTRONG
465 HAAS AVENUE, APARTMENT N0. 4
ATLANTA, GEORGIA 30316
404-681-2784

34pp

QUESTION PRESENTED

WHETHER PETITIONERS, WHOSE HOME HAD BEEN TAKEN FROM THEM BY THE FORECLOSURE PROCESS INSTITUTED BY RESPONDENT, HAVE STANDING TO CHALLENGE RESPONDENT'S ADMINISTRATIVE DECISION TO PAY FEDERAL NATIONAL MORTGAGE ASSOCIATION ON ITS MORTGAGE INSURANCE CONTRACT WHERE THERE IS NO EVIDENCE SUBMITTED OF AN INSURANCE CONTRACT AND RESPONDENT IS IN VIOLATION OF TITLE 28, SECTION 1713(k) OF THE UNITED STATES CODE AND THE DUE PROCESS CLAUSE OF AMENDMENT V OF THE UNITED STATES CONSTITUTION?

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
ASSOCIATION OF DATA PROCESSING SERVICE ORGANIZATIONS, INC. V. CAMP, 397 U. S, 150. 153 (1970)	4
ASSOCIATION OF DATA PROCESSING SERVICE ORGANIZATIONS, INC. V. CAMP, 90 S. CT. 838 (1970)	4
STATUTES	
TITLE 5, SECTIONS 702 THROUGH 706, UNITED STATES CODE	1, 3, 5, 6
TITLE 12, SECTION 1713(k), UNITED STATES CODE	5, 6
TITLE 28, SECTION 1331, UNITED STATES CODE	1, 4
TITLE 28, SECTION 1254(1), UNITED STATES CODE	1

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished. The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was February 29, 2000, The jurisdiction of this Court is invoked under Title 28, Section 1254(1) of the United States Code.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition involves Title 5, Sections 702 through 706 United States Code, Title 12, Section 1713(k),United Staten Code, Title 28, Section 1331 United Staten Code, and Amendment V of the United States Constitution.

STATEMENT OF THE CASE

On November 14, 1980, Petitioners purchased a home with a Federal Housing Administration insured loan. The Federal Housing Administration is a division of the Housing and Urban Development Department. The loan was obtained from Southern Investment Corporation. The amount of the loan, $34,200.00 Dollars, was to be repaid with interest from date at the rate of Thirteen percentum (13.00%) per annum on the unpaid balance

until paid. Principal and interest was payable at the office of Southern Finance Corporation in Augusta, Georgia, or at such other place as the holder may designate in writing in monthly installments of Three Hundred Seventy Eight and 32/100 Dollars ($378.32), commencing on the first day of January, 1981, and on the first day of each month thereafter until principal and interest are fully paid, except that the final payment of the entire indebtedness evidenced hereby, if not sooner paid would be due and payable on the first day of December 2010. Petitioners made the monthly payments in accordance with the Security Deed and Note from January 1, 1981 until August of 1991. At that time, Petitioners informed Atlantic Mortgage & Investment Corporation, a Jacksonville. Florida corporation, who was then the holder of the note, in writing, that the balance remaining to be repaid under the note was $771.44 Dollars in accordance with the legal terms of the note. Atlantic Mortgage & Investment Corporation replied saying the loan was to be repaid over a 30-year term. Petitioners again informed the mortgage corporation of the legal amount to be repaid under the agreement and the law of Georgia. Federal National Mortgage Association, the transferee of Atlantic Mortgage & Investment Corporation, began foreclosure proceedings in March of 1992 in DeKalb County State Court. Petitioners' home was sold under the power of sale clause contained in the Security Deed and Note. In response to the dispossessory warrant, Petitioners answered denying Petitioners were tenants at sufferance, denied the existence of a landlord and tenant relationship and averred that Petitioners owned the property located at 1826 Wee Kirk Road by virtue of Petitioners' superior title interest because at the time of the dispossessory warrant proceedings, Petitioners had repaid a total of $48,424.96 Dollars and had a balance to be repaid of $771.44 Dollars. Petitioners were wrongfully evicted by the erroneous order of the State Court judge. The DeKalb Court judge's order was in direct conflict with Federal National Mortgage Association's attorney's statement that Petitioners had repaid the principal of the loan. The State Court

judge also disregarded Petitioners' statement that Petitioners owed a balance of $771.44 Dollars in response to Federal National Mortgage Association's attorney's question as to the balance remaining. The State Court judge also erred by failing to order the $35,858.53 Dollars of surplus proceeds from the foreclosure sale to be distributed as required by Georgia law. On March 17, 1995, Petitioners filed a plea to the jurisdiction action in the DeKalb County Superior Court. The plea to the jurisdiction challenged the jurisdictional power of the state court judge where Petitioners had substantially performed in accordance with the legal terms of the Security Deed and Note, and the computations of the amount of payments were facts which were subject to judicial notice under Georgia law. The case was dismissed by the Superior Court and the dismissal was affirmed by both Georgia appellate courts.

Petitioners then petitioned for judicial review under Title 5, Sections 702 through 706, United States Code, of agency administrative action after failed attempts to notify the Department of Housing and Urban Development before the foreclosure and after the foreclosure proceedings. Petitioners petition for judicial review of agency action under Title 28, Section 1331, United States Code, was dismissed and dismissed by the Court of Appeals under Section 1331 for lack of standing.

REASONS FOR GRANTING THE PETITION

The Court of Appeals erred in determining that Petitioners did not have standing to challenge HUD's decision relating to the mortgage insurance contract with Federal National Mortgage Association. The decision by Respondent to pay Fannie Mae on a loan insurance claim based on Respondent's erroneous determination of Petitioners' default on their mortgage was an administrative error which caused financial injury to Petitioners. The financial injury being the taking of their home without compensation and the associated costs of renting. Where Petitioners seek review of administrative action which has caused Petitioners financial injuries as stated above,

> "(T)he Administrative Procedure Act grants standing to a person" aggrieved by agency action within the meaning of a relevant statute," Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150. 153 (1970).

In Association of Data Processing Service Organizations, Inc. v, Camp, 90 S. Ct, 838 (1970), the Supreme Court's requirements for standing to challenge agency action read:

> "The Court's approach to standing, set out in Data Processing has two steps: (1) since "the framework of Article III... restricts judicial power to "cases and controversies," the first step is to determine "whether the plaintiff alleges that the challenged action has caused him injury in fact": (2) if injury in fact is alleged, the relevant statute or constitutional provision is then examined to determine "whether the interest sought "to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question."

Title 5, Section 702 of the Administrative Procedure Act grants Petitioners standing to challenge the administrative decision by HUD to honor a nonexistent mortgage insurance contract based on incorrect computations where the decision causes injury to Petitioners. The Official Code of Georgia Annotated, Section 13-5-30 (2). requires that all contracts to answer for the debt of another be in writing. The taking of Petitioners' property by Respondent and Respondent's agent, Fannie Mae, was a violation of the due process clause of Amendment V of the United States Constitution, which provides:

> "nor be deprived of life liberty, or property, without due process of law nor shall private property be taken for public use, without just compensation."

Respondent is authorized pursuant to Title 12, Section 1713(k) of the United States Code to:

> "The Secretary is authorized either to (1) acquire possession of and title to any property covered by a mortgage insured under this section and assigned to him, by voluntary conveyance in extinguishment of the mortgage indebtedness, or (2) institute proceedings for foreclosure on the property covered by any such insured mortgage and prosecute such proceedings to conclusion. The Secretary at any sale under foreclosure may, in his discretion, for the protection of the General Insurance Fund, bid any sum up to but not in excess of the total unpaid indebtedness secured by the mortgage, plus taxes, insurance, foreclosure costs, fees, and other expenses, and may become the purchaser of the property at such sale:"

The Respondent's institution of the foreclosure proceedings under Title 12, Section 1713(k)(2) and subsequent payment of $32,052,90 Dollars as the balance of principal outstanding to Federal National Mortgage Association, the assignor, violated the congressional intent of Section 1713(k), which prohibits such payments:

> "The Secretary at any sale under foreclosure may, in his discretion, for the protection of the General Insurance Fund bid any sum up to but not in excess of the total unpaid indebtedness secured by the mortgage..."

As the attached computations and Security Deed and Note evidence, Appendix D, a balance of $771.44 Dollars was the correct outstanding principal balance; consequently, the institution of foreclosure proceedings under these facts which resulted in injury to Petitioners was contrary to Congress's intention and thus a violation of Title 12, Section 1713(k). Under Title 28, Sections 702 through 706 of the Administrative Procedure Act, the Petitioners are granted standing to challenge Respondent's lack of statutory authority to foreclose on Petitioners' home. The taking of Petitioners' home without compensation violated Petitioners' rights under the due process clause of Amendment V of the Constitution of the United States. Respondent's actions caused Petitioners to be "aggrieved by agency action within the meaning of a relevant statute", Association of Data Processing Service Organizations, Inc. v. Camp, supra, or constitutional guarantee in question, in that they suffered financial injury as a result of the taking of their home.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Bobby J. Armstrong, Juris Doctorate Pro Se
465 Haas Avenue, Apartment No. 4
Atlanta, Georgia 30316
404-681-2784

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[DO NOT PUBLISH]

FILED U.S. COURT OF APPEALS
ELEVENTH CIRCUIT FEB 29 2000
THOMAS K. KAHN, CLERK

No. 99-12515
Non-Argument Calendar

D. C. Docket No. 98-02071-CV-CAM-1

BOBBY J. ARMSTRONG,
DELPHINE JONES ARMSTRONG,
Plaintiffs-Appellants,
versus
DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(February 29, 2000)

Before EDMONDSON, BLACK and MARCUS, Circuit Judges.

PER CURIAM:

Bobby and Delphine Jones Armstrong, proceeding pro se, appeal the dismissal of their petition seeking review of a final agency action filed under the Administrative Procedures Act, 5 U.S.C. §,702. The Armstrongs filed suit against the Department of Housing and Urban Development ("HUD"), claiming that HUD violated their due process rights by instituting a foreclosure action on their residence, which was purchased with a loan insured by HUD through the Federal National Mortgage Association ("Fannie Mae"). HUD paid Fannie Mae for the loss resulting from the foreclosure judgment under an insurance contract between HUD and Fannie Mae. Because the Armstrongs did not have standing to challenge HUD's decision to pay Fannie Mae under the insurance contract, the district court did not err in dismissing their petition for review.*

AFFIRMED.

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* In their petition, the Armstrongs requested only that the district court "reverse the decision of [HUD], and grant such other [a]nd further relief as . . , the court may [deem] just and proper in the circumstances." HUD's only decision was to pay Fannie Mae the amount of the foreclosure order. The Armstrongs have not suffered any injury "as a result of" HUD's conduct, as ; HUD simply paid the amount it owed under an insurance contract with Fannie Mae. Even if this Court were to enter "a favorable decision," it would not redress the Armstrongs' alleged injury, as they would gain nothing from depriving Fannie Mae of its foreclosure costs and would not be returned to their home.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BOBBY J. ARMSTRONG and	:	
DELPHINE JONES ARMSTRONG,	:	
Petitioners,	:	
v.	:	1:98-cv-2071-CAM
DEPARTMENT OF HOUSING AND	:	
URBAN DEVELOPMENT,	:	
Respondent.	:	

ORDER

The above-styled action is before the court on Respondent's motion to dismiss [# 6].

FACTS

On November 14, 1980, Petitioners purchased a home located at 1826 Wee Kirk Road in Atlanta, Georgia. (Petitioners' Exhibits B and D). In connection with their purchase of that home, Petitioners executed a Security Deed Note in the amount of $34,200.00, with an interest rate of 13%. (Petitioners' Exhibit D). By the express terms of that note, Petitioners agreed to make monthly payments of $378.32 until December 2010 (a period of 30 years) or until the entire indebtedness had been paid. (Id.). Petitioners stopped making the monthly payments provided for under the Security Deed Note and in March 1992, the property was foreclosed upon. (Respondent's Exhibit 3).[1] At that time, the Federal National Mortgage Association ("Fannie Mae") held the security deed on Petitioners' property. (Id.). The Department of

[1]Respondent's Exhibits 3-5 are court records of which this court may take judicial notice.

Housing and Urban Development's ("HUD") paid a mortgage insurance claim submitted by Fannie Mae after Petitioners defaulted on their mortgage loan.

In 1993, after Petitioners' property had been foreclosed upon, Mr. Armstrong began contacting officials at HUD regarding the foreclosure. Mr. Armstrong claimed that he and his wife had not defaulted on their loan based on his calculation of how the loan was to be repaid. (Petitioners' Exhibit A). Apparently, Petitioners stopped making the monthly mortgage payments because they believed that they had already fully repaid the loan. Petitioners claimed that HUD's decision to pay Fannie Mae was in error because Petitioners had not defaulted on their mortgage loan.

In response to Mr. Armstrong's complaints against Fannie Mae and the foreclosure on his home, on September 1, 1993, HUD wrote Mr. Armstrong and advised him that HUD agreed with Fannie Mae that Petitioners could not unilaterally recalculate the method of payment on their loan. (Id.). Petitioners had never had any administrative proceeding pending with HUD. In this regard, the final paragraph of the September 1, 1993 letter stated:

> We acknowledge that you informed us that you believe that it violates the United States constitution for mortgage companies to interpret the Security Deed and the Security Deed Note in the manner in which they were interpreted in your case. You stated that you are considering bringing suit in court to challenge the actions of the mortgagee and HUD. While we neither encourage nor discourage your pursuit of any rights that you may think that you have in Court, we do affirm that this reply constitutes final agency action with respect to your complaint. You have, therefore, exhausted your administrative remedies and are free to pursue judicial redress.

(Petitioners' Exhibit A, p. 3).

Petitioners filed a lawsuit in the Superior Court of DeKalb County against Fannie Mae. (Respondent's Exhibit 4). HUD was not named as a party to that lawsuit. On January 26, 1996, Judge Robert P. Mallis granted Fannie Mae's motion to dismiss for failure to state a claim upon which relief can be granted. (Respondent's Exhibit 4, p. 5). Petitioners appealed Judge Mallis' decision to the Georgia Court of Appeals and to the Georgia Supreme Court. The dismissal was affirmed by both Georgia appellate courts. (Respondent's Exhibit 5).

On July 23, 1998, Petitioners filed this Petition for Judicial Review of Agency Administrative Action. Petitioners are appealing from HUD's September 1, 1993 letter. (Petitioners' Exhibit A.). Petitioners request this court to "reverse the decision of the [R]espondent." HUD was served with a summons and complaint by certified mail on July 24, 1998. Neither the Attorney General nor the United States Attorney have been served with a copy of the summons and complaint.

LEGAL DISCUSSION

"In appraising the sufficiency of the complaint . . . the accepted rule (is) that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him tc relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See also Linder v. Portocarrero, 963 F.2d 332 (11th Cir. 1992). The court must accept the facts pleaded in the complaint as true and construe them in a light favorable to Petitioner. Quality Foods v. Latin American Agribusiness Development Cory., 711 F. 2d 989, 994-95 (11th Cir. 1983).

Respondent moves to dismiss Petitioners' complaint pursuant to Fed.R.Civ.P. 12(b)(4)(5) and (6) on the grounds that

Petitioners failed to properly serve Respondent and failed to state a claim upon which relief can be granted.

Fed.R.Civ.P. 4(i) requires that, in any case brought against a federal agency as here, service must be made upon the Attorney General of the United States, as well as the United States Attorney for the district in which the action is filed. Under this rule, Petitioners were required to serve the Attorney General and the United States Attorney, as well as the Respondent agency. In a prior brief, Respondent put Petitioners on notice that they had not properly served Respondent. (Respondent's brief in response to Petitioners' motion for entry of default judgment). To date, Petitioners still have not perfected service on either the Attorney General or the United States Attorney. Thus, the Petition is subject to dismissal under Fed.R.Civ.P. 12(b)(4) and (5) for failure to properly serve Respondent.

Alternatively, Petitioners have no standing to challenge HUD's decision relating to its mortgage insurance contract with Fannie Mae. Petitioners are asking this court to "reverse the decision of the respondent." The only decision Respondent made that in any way relates to Petitioners was the decision by HUD to pay Fannie Mae on an insurance claim based on Petitioners' default on their mortgage.[2] Petitioners were neither a party to, nor

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[2] In this regard, HUD advised Petitioners in its September 1, 1993 letter as follows:

> Since HUD in fact insured the mortgage company against loss in the event that you did not either pay your monthly payment or prepay consistent with the Security Deed Note and the Security Deed as described above, it is HUD's position that HUD was not defrauded. When you stopped making monthly payments HUD was in a

a third-party beneficiary of, HUD's contract with Fannie Mae to provide mortgage insurance. Thus, they have no standing to complain of HUD's decision to pay an insurance claim submitted by Fannie Mae pursuant to that contract. See Florida Int'l. Indem. Co. v. City of Metter, Ga., 952 F.2d 1297, 1299-1300, n. 10 (11th Cir. 1996) ; Sherrill v. Louisville Title Ins. Co., 134 Ga.App. 322 (1975) (holding that borrower was not a third-party beneficiary of lender's title insurance and could not maintain suit on insurance contract).

In addition, the Petition fails to state a claim upon which relief can be granted. Petitioners apparently are alleging that their Fifth Amendment rights were violated because they were denied due process of law in connection with the taking of their property. Even if Petitioners could establish some factual basis for a claim of violation of their Fifth Amendment rights,[3] any such claim would not be against Respondent. HUD was not in any way involved in the foreclosure on Petitioners' property.

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[2] position in which it must either honor its insurance contract or be sued for breach of contract.

(Petitioners' Exhibit A). Except for insisting upon a different method of calculation, Petitioners do not allege that HUD's decision was otherwise erroneous.

[3] The record shows that Petitioners were given all necessary due process before their home was foreclosed upon. (Respondent's Exhibit 4, pp. 18-23).

Finally, the doctrine of collateral estoppel precludes a party from relitigating an issue that has already been litigated and resolved in a prior proceeding. Pleming v. Universal-Rundle Corp., 142 F.3d 1354, 1359 (11th Cir. 1998). Petitioners have previously litigated the identical issue that they are arguing to this court, i.e., that based on their calculations of how the mortgage should be repaid, they had not defaulted on the loan. (Petitioners' Exhibit E; Respondent's Exhibit 5). The court records indicate that Petitioners "actually litigated" that issue and that the issue was "a critical and necessary part" of their action against Fannie Mae. (Id.). Moreover, the fact that Petitioners' case was appealed to both the Georgia Court of Appeals and the Georgia Supreme Court indicates that Petitioners had a full and fair opportunity to litigate the issue.

CONCLUSION

Therefore, the court hereby GRANTS Respondent's motion to dismiss [# 6] and DISMISSES this case.

The Clerk of the court is hereby DIRECTED to CLOSE this case.

SO ORDERED, this 7th day of May, 1999.

/s/ Charles A Moye, Jr.
UNITED STATES DISTRICT JUDGE
CAM:S

ENTERED ON DOCKET MAY 14, 1999

APPENDIX C

U.S. Department of Housing
and Urban Development
Atlanta Regional Office, Region IV
Richard B Russell Federal Building
75 Spring Street. S.W.
Atlanta, Georgia 30303-3388

September 1, 1993
Mr. Bobby J. Armstrong
1286 Metropolitan Avenue
Atlanta, Ga 30316

Dear Mr. Armstrong:

Subject: Final Agency Action On Complaint
Involving the Foreclosure of Mortgage On
Property At 1826 Wee Kirk Road, SE, Atlanta,
GA 30316 Insured As FHA Case Number,
101-3124174

This is to provide the final agency response to your letter to the Inspector General dated June 21, 1993 which was referred to the Office of Housing for response. This also responds to your letter to me dated August 4, 1993 and summarizes in writing the position taken by Mr. Murray and Mr. Reavis in their meeting with you on August 19, 1993.

As we read your letter to me your position is and we quote:

...THE RELEVANT LANGUAGE OF THE NOTE READS "FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of Southern Finance Corporation the principal sum of Thirty Four Thousand Two Hundred and 00/100-----Dollars ($34,200.00), with interest from date at the rate of Thirteen per centum (13.00%.) per annum on the unpaid

balance until paid." THE OPERATIVE WORDS ARE "per centum" AND "per annum." PER CENTUM IS DEFINED IN BLACK'S LAW DICTIONARY AS MEANING BY THE HUNDRED, OR SO MANY HUNDREDTHS. PER ANNUM IS DEFINED IN BLACK'S LAW DICTIONARY AS MEANING BY THE YEAR.

Based upon this interpretation it is your contention that the loan has been paid. We quote again from your letter to me:

...(1) YES THE LOAN WAS PAID TO THE 128TH MONTH AND IN ACCORDANCE WITH THE ABOVE QUOTED LANGUAGE OF THE NOTE: (128 MONTHS X 378.32 MONTHLY PAYMENT (THIS AMOUNT DOES NOT INCLUDE INSURANCE AND TAXES) = $48,424.96 DOLLARS), (2) PRINCIPAL BALANCE FOR THE 128TH MONTH IN ACCORDANCE WITH THE SECURITY DEED AND NOTE IS -0-. PRINCIPAL AMOUNT OF LOAN $34,200.00 DOLLARS, WAS REPAID IN 91 MONTHS: ($34,200.00 ORIGINAL LOAN AMOUNT DIVIDED BY $ 378 (ROUNDED OFF) MONTHLY PAYMENT AMOUNT ='91 MONTHS AND 91 MONTHS X $ 378.32 = $ 34,427.12 DOLLARS). (3) DELINQUENT INTEREST IN THE 128TH MONTH WAS $771.44 AGAIN, PLEASE REFERENCE MY ATTACHED COMPUTATIONS. (4) AS A FRAUD WAS PERPETRATED UPON THE COURT BY THE FILING OF FALSE DOCUMENTS, THE COST ARE INVALID AND THE ACTIONS OF THOSE INVOLVED MUST BE CONSIDERED TO BE ILLEGAL AND CRIMINAL.

As you were advised at the meeting, HUD believes the interpretation of your note by the mortgage company involved to be consistent with the standard practice of the industry. As was stated to you, the note cannot be read in isolation. The Security Deed Note provided for monthly installments of $378.32. So long as these were paid you could not be found in default and your

mortgage could not be foreclosed upon for a period of thirty years (January 1, 1981 to December 1, 2010).

The Security Deed, which you signed at closing together with the Security Deed Note, provided the order in which each monthly payment would be applied. See Paragraph 2. of the Security Deed, a copy of which is attached. Basically, the order of application is mortgage insurance, ground rents if any, interest, and principal. Therefore, it is HUD's position that you are not free to unilaterally change the amortization schedule based upon your interpretation of the note in the manner that you propose. Under the Security Deed Note and the Security Deed, the mortgagee was required to afford you thirty years to repay your loan. Accordingly, they did their amortization schedule for a thirty year term with the initial payment being applied primarily to interest with the declining balance of principal being reduced over thirty years. See amortization schedule attached.

To be sure, the Security Deed, and the Security Deed Note, allowed you to prepay.[1] However, this language does not allow you to achieve prepayment by unilaterally imposing a different application of payments than that set forth in Paragraph 2 of the Security Deed as described above. In order to achieve prepayment, you were required to "tender to the Grantee, in accordance with the provisions of the note secured hereby, full payment of the entire indebtedness represented thereby". See Paragraph 3 of the Security Deed. We read this to mean payment of any principal balance remaining at what ever anniversary date you prepaid after the monthly payments had been applied consistent with Paragraph 2.

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[1]Both documents include the language "if not sooner paid".

The cost of amortizing the loan in this manner should have been disclosed to you at closing in the settlement documents.

Therefore, we do not believe the conduct of the mortgagee to be criminal, fraudulent, or illegal. In fact, we believe that virtually all mortgagees would have foreclosed on your property under the circumstances of this case, notwithstanding your interpretation of the note. Since HUD in fact insured the mortgage company against loss in the event that you did not either pay your monthly payment or prepay consistent with the Security Deed Note and the Security Deed as described above, it is HUD's position that

HUD was not defrauded. When you stopped making monthly payments HUD was in a position in which it must either honor its insurance contract or be sued for breach of contract.

We acknowledge that you informed us that you believe that it violates the United States constitution for mortgage companies to interpret the Security Deed and the Security Deed Note in the manner in which they were interpreted in your case. You stated that you are considering bringing suit in court to challenge the actions of the mortgagee and HUD. While we neither encourage nor discourage your pursuit of any rights that you may think that you have in Court, we do affirm that this reply constitutes final agency action with respect to your complaint. You have, therefore, exhausted your administrative remedies and are free to pursue judicial redress.

Very sincerely yours,

/s/ Kenneth E. Williams
Director
Office of Housing

Attachment

APPENDIX D

$34,200.00

THE FOLLOWING COMPUTATIONS ARE COMPUTED PER THE SECURITY DEED NOTE'S LANGUAGE: "pay to the order of Southern Finance Corporation the principal sum of Thirty Four Thousand Two Hundred and 00/100 Dollars ($34,200.00) , with interest from date at the rate of Thirteen per centum (13.00%) per annum on the unpaid balance until paid.

$34,2000.00 ORIGINAL LOAN AMOUNT

$378.32 MONTHLY PAYMENT (Does not include insurance
and taxes. With insurance and taxes: $470.00 to $496.00
x 12 NUMBER OF YEARLY PAYMENTS

756.64
378.32 TOTAL AMOUNT OF ANNUAL PAYMENTS
$4539.84

(1) $34,200.00
- 4,540.00
$29,660.00 YEAR 1 BALANCE

$29,660.00
x .13
88,980.00
29,660.00
$3,755.80 YEAR 1 INTEREST

(2) $29,660.00
- 4,540.00
$25,120.00 YEAR 2 BALANCE

$25,120.00
x .13
75,360.00
25,120.00
$3,265.60 YEAR 2 INTEREST

(3) $25,120.00
- 4,540.00
$20,580.00 YEAR 3 BALANCE

$20,580.00
x .13
61,740.00
20,580.00
$2,675.40 YEAR 3 INTEREST

(4) $20,580.00
- 4,540.00
$16,040.00 YEAR 4 BALANCE

$16,040.00
x .13
48,120.00
16,040.00
$2,085.20 YEAR 4 INTEREST

(5) $16,040.00
- 4,540.00
$11,500.00 YEAR 5 BALANCE

$11,500.00
x .13
34,500.00
11,500.00
$1,495.00 YEAR 5 INTEREST

(6) $11,500.00
- 4,540.00
$ 6,960.00 YEAR 6 BALANCE

$ 6,960.00
x .13
20,880.00
6,960.00
$ 904.80 YEAR 6 INTEREST

(7) $ 6,960.00
- 4,540.00
$ 2,420.00 YEAR 7 BALANCE

$ 2,420.00
x .13
7,260.00
2,420.00
$ 314.60 YEAR 7 INTEREST

INTEREST FOR SEVEN (7) YEARS

$ 3,755.80
3,265.60
2,675.40
2,085.20
1,495.00
904.80
314.60
$14,496.40 TOTAL INTEREST WHICH MUST BE PAID ACCORDING TO SECURITY DEED AND NOTE

$34,200.00 ORIGINAL LOAN AMOUNT
+14,996.40 TOTAL INTEREST
$49,196.40 TOTAL REPAYMENT REQUIRED

$378.32 AMOUNT OF MONTHLY PAYMENTS
x 128 (10 years x 12 = 120 + 8 = 128) TOTAL NUMBER OF
302656 PAYMENTS)
75664
+37832
$48,424.96 AMOUNT ACTUALLY PAID BY BOBBY J. ARMSTRONG AND DELPHINE ARMSTRONG

$49,196.40 TOTAL REPAYMENT REQUIRED
48,424.96 AMOUNT ACTUALLY PAID
$ 771.44 AMOUNT OWING ON BALANCE

FHA FORM N0. 9112
Revised July 1970

FHA CASE NO.
101-312417-203

This form is used In connection with security deeds insured under the one to four-family provisions of the National Housing Act.

SECURITY DEED NOTE

$34,200.00

Atlanta , Georgia. November 14,1980

FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of Southern Finance Corporation the principal sum of Thirty Four Thousand Two Hundred and 00/100 Dollars ($34,200.00) with interest from date at the rate of Thirteen per centum 13.00 %) per annum on the unpaid balance until paid. Principal and interest shall be payable at the office of Southern Finance Corporation in Augusta, Georgia, or at such other place as the holder may designate in writing, in monthly installments of Three Hundred Seventy Eight and 32/100 Dollars ($ 378.32), commencing on the first day of January, 1981 and on the first day of each month thereafter until the principal and interest are fully paid except that the final payment of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable on the first day of December 2010.

It is agreed that time is of the essence of this contract and that in the event of default in the payment of any such installment, such default not being made good prior to the due date of the next such installment, this holder of this note may, without notice, exercise the option of treating the remainder of the debt as due and collectible. Failure to exercise this option shall not constitute a waiver of the right to exercise same at any other time.

In the event of default in payment of this note, and if the same is collected by an attorney at law, the undersigned agree(s) to pay all costs of collection, including a reasonable attorney's fee.

Presentment, protest, and notice are hereby waived. The undersigned further waive(s) and renounce(s) all rights to Exemption and Homestead provided by the Constitution and Laws of Georgia and of the United States to, and in, all property, real and personal, against the enforcement of this obligation or any extension or renewal thereof.

This note is secured by a Security Deed to real estate in, and is to be construed according to the laws of, the State of Georgia.

WITNESS the hand(s) and seal(s) of the undersigned.

/s/ Bobby J. Armstrong [SEAL]

/s/ Delphine Armstrong [SEAL]

This is to certify that this is a true and correct copy of the original Note executed by the Maker in favor of the Payee as shown thereon.

This 14th day of November 1980

/s/ JN Kneller, Attorney

This form is used in connection with security deeds insured under the one to four family provisions of the National Housing Act.

SECURITY DEED

THIS INDENTURE made and entered into this 14th of November, 1980; by and between Bobby J. Armstrong and Delphine Armstrong hereinafter, with their heirs, executors, administrators and assigns, called the Grantor, and Southern Finance Corporation a corporation organized and existing under the laws of State of Georgia, hereinafter, with its successors and assigns, called the Grantee;

WITNESSETH, that in and for the consideration hereinafter mentioned, receipt whereof is hereby acknowledged, the Grantor does hereby bargain, sell, grant and convey unto the Grantee, all that real estate situated and being in

ALL THAT TRACT or parcel of land lying and being in Land Lot 109 of the 15th District of DeKalb County, Georgia, being Lot 3, Block B, Pine Forest Estates Subdivision, as per plat recorded :(n Plat Book 29, page 79, DeKalb County Records, which plat is hereby referred to and made a part hereof by reference, being improved property more particularly shown on survey prepared by Solar Land Surveying Company, dated November 10, 1980.

GEORGIA INTANGIBLE TAX PAID $103.50 11/1/80
EUGENE H. ADAMS, Tax Commissioner
DEKALB COUNTY, GA.

Filed and Recorded DeKalb Co. GA Nov. 18 8:36 AM 1980
Signed by C. Kelly, Clerk of Superior Court

including all buildings and improvements thereon (or that may hereafter be erected thereon); together with the hereditaments and appurtenances and all other rights thereunto belonging, or in

anywise now or hereafter appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all plumbing, heating, and lighting fixtures, and equipment now or hereafter attached to or used in connection with said premises,

TO HAVE AND TO HOLD the same unto the Grantee and the successors in interest of the Grantee forever in fee simple.

And the Grantor covenants that he is lawfully seized and possessed of said premises; that he has good right to sell and convey said premises; that the same are free from all encumbrances; and that he hereby binds himself and his successors in interest to WARRANT and DEFEND the title thereto and every part thereof against the lawful claims of all persons whomsoever.

This conveyance is to be construed under the existing laws of the State of Georgia as a deed passing title, and not as a mortgage, and is intended to secure the payment of a debt in the principal sum of Thirty Four Thousand Two Hundred and 00/100 Dollars ($34,200.00) together with interest thereon from date at the rate of Thirteen per centum (13.00 %) per annum on the unpaid balance until paid, for money lent, as evidenced by a promissory note of even date herewith, the terms of which arc hereby incorporated in this instrument by reference, executed by the Grantor to the order of the Grantee, principal and interest being payable at the office of Southern Finance Corporation in Augusta, Georgia, or at such other place as the holder of the note may designate in writing, in equal monthly installments of Three Hundred Seventy Eight and 32/100 Dollars ($378.32) commencing on the first day of January, 1981, and on the first day of each month thereafter until the principal and interest are fully paid, except that the final payment of the entire indebtedness evidenced by said note, if not sooner paid, shall be due and payable on the first day of December 2010.

THE GRANTOR COVENANTS AND AGREES:

1. That he will promptly pay the principal of and interest on the indebtedness evidenced by the said note, at the times and in the manner therein provided. Privilege is reserved to pay the debt in whole, or in an amount equal to one or more monthly payments on the principal that are next due on the note, on the first day of any month prior to maturity; provided, however, that written notice of an intention to exercise such privilege is given at least thirty (30) days prior to prepayment.

2. That, together with and in addition to the monthly payments of principal and interest payable under the terms, of the note secured hereby, he will pay to the Grantee, on the first-day of each month until the said note is fully paid, the following sums:

(a) An amount sufficient to provide the holder hereof with funds to pay the next mortgage insurance premium if this instrument and the note secured hereby are insured or a monthly charge (in lieu of a mortgage insurance premium) if they are held by the Secretary of Housing and Urban Development as follows:

(I) If and so long as said note of even date and this Instrument are insured or are reinsured under the provisions of the National Housing Act, an amount sufficient to accumulate in the hands of the holder one (1) month prior to its due date the annual mortgage insurance premium, in order to provide such holder with funds to pay such premium to the Secretary of Housing and Urban Development pursuant to the National Housing Act, as amended, and applicable Regulations thereunder; or

(II) If and so long as said note of even date and this instrument are held by the Secretary of Housing and Urban Development, a monthly charge (in lieu of a mortgage insurance premium) which shall be in an amount equal to one twelfth (1/12) of one-half (½) per centum of the average outstanding balance due

on the note computed without taking into account delinquencies or prepayments;

(b) A sum equal to the ground rents, if any, next due, plus the premiums that will next become due and payable on policies of fire and other hazard insurance covering these premises, plus taxes and assessments next due on the premises covered by this Security Deed (all as estimated by the Grantee) less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such ground rents, premiums, taxes and assessments will become delinquent, such sums to be held by Grantee in trust to pay said ground rents, premiums, taxes, and special assessments; and

(c) All payments mentioned In the two preceding subsections of this paragraph, and all payments to be made under the note secured hereby, shall be added together, and the aggregate amount thereof shall be paid by the Grantor each month in a single payment to be applied by the Grantee to the following Items In the order set forth: (I) premium charges under the contract of insurance with the Secretary of Housing and Urban Development, or monthly charge (in lieu of mortgage insurance premium), as the case may be;

(II) ground rents, taxes, special assessments, fire and other hazard insurance premiums;

(III) interest on the note secured hereby; and

(IV) amortization of the principal of said note.

Any deficiency in the amount of such aggregate monthly payment shall, unless made good by the Grantor prior to the due date of the next such payment, constitute an event of default under the Security Deed. The Grantee may collect a "late charge" not to exceed four cents (4¢) for each dollar ($1) of each payment more than fifteen (15) days in arrears to cover the extra expense involved in handling delinquent payments.

3. That if the total of the payments made by the Grantor under *(b)* of paragraph 2 preceding shall exceed the amount of payments actually made by the Grantee for ground rents, taxes, and assessments, or insurance premiums, as the case may be, such excess, if the loan is current, at the option of the Grantor shall be credited on subsequent payments to be made by the Grantor, or refunded to the Grantor. If, however, the monthly payments made by the Grantor under *(b)* of paragraph 2 preceding shall not be sufficient to pay ground rents, taxes and assessments, or insurance premiums, as the case may be, when the same shall become due and payable, then the Grantor shall pay to the Grantee any amount, necessary to make up the deficiency, on or before the date when payment of such ground rents, taxes and assessments, or insurance premiums shall be due. If at any time the Grantor shall tender to the Grantee, in accordance with the provisions of the note secured hereby, full payment of the entire indebtedness represented thereby, the Grantee shall, in computing the amount of such indebtedness, credit to the account of the Grantor all payments made under the provisions of *(a)* of paragraph 2 hereof which the Grantee has not become obligated to pay to the Secretary of Housing and Urban Development, and any balance remaining in the funds accumulated under the provisions of *(b)* of paragraph 2 hereof. If there shall be a default under any of the provisions of this Security Deed resulting in a public sale of the premises covered hereby, or if the Grantee acquires the property otherwise after default, the Grantee shall apply, or at the time of the commencement of such proceedings, or at the time the property is otherwise acquired, the balance then remaining in the funds accumulated under *(b)* of paragraph 2 preceding, as a credit against the amount of principal then remaining unpaid under said note, and shall properly adjust any payments which shall have been made under *(a)* of paragraph 2.

4. That he will pay all taxes, assessments, water rates, and other governmental or municipal charges, fines, or impositions, for which provision has not been made hereinbefore, and in default

thereof the Grantee may pay the same; and that he will promptly deliver the official receipts therefor to the said Grantee.

5. That such expenses and fees as may be incurred in the protection of said premises, including the fees of any attorney employed by the Grantee for the collection of any or all of the indebtedness hereby secured, or foreclosure by Grantee's sale, or court proceedings or in any other litigation or proceeding affecting said premises, and attorneys' fees reasonably incurred in any other way, shall be paid by the Grantor and secured by this instrument.

6. That the Grantor will keep the improvements now existing or hereafter erected on the premises covered hereby, insured as may be required from time to time by the Grantee against loss by fire and other hazards, casualties and contingencies in such amounts and for such periods as may be required by Grantee, and will pay promptly, when due, any premiums on such insurance for payment of which provision has not been made hereinbefore. All insurance shall be carried in companies approved by Grantee and the policies and renewals thereof shall be held by Grantee and have attached thereto loss payable clauses in favor of and in form acceptable to the Grantee. In event of loss Grantor will give immediate notice by mail to Grantee, and Grantee may make proof of loss if not made promptly by Grantor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Grantee instead of to Grantor and Grantee jointly, and the insurance proceeds, or any part thereof, may be applied by Grantee at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In event of foreclosure of this Security Deed or other transfer of title to the premises covered hereby in extinquishment of the indebtedness secured hereby, all right, title and interest of the Grantor in and to any insurance policies then in force shall pass to the purchaser or Grantee.

7. That the Grantor will not assign the rent or any part of the rent of said premises or demolish or remove any building without the written consent of the Grantee.

8. That in the event of a default in any of the covenants or conditions of this instrument, the Grantee, at its option, may foreclose this instrument in any Court of competent jurisdiction, and shall be entitled to the immediate appointment of a receiver for the collection of the rents of said premises during the pendency of such foreclosure. This right is cumulative and is not a waiver of the right to advertise and sell under Grantee's advertisement of sale.

9. That in the event of a default in any of the covenants or conditions of this instrument, or of the note secured hereby, the rents and profits of the premises are hereby assigned to the Grantee as security for the payment of the indebtedness secured by this instrument.

10. That he will keep all buildings, fences, and other improvements on said real estate in as good repair and condition as the same are in at the time of the execution of this instrument, and will permit no waste.

11. That if the premises, or any part thereof, be condemned under any power of eminent domain, or acquired for a public use, the damages, proceeds, and the consideration for such acquisition, to the extent of the full amount of indebtedness upon this Security Deed and the note secured hereby remaining unpaid, are hereby assigned by the Grantor to the Grantee and shall be paid forthwith to the Grantee to be applied by it on account of the indebtedness secured hereby, whether due or not.

12. The Grantor further agrees that should this Security Deed and the note secured hereby not be eligible for insurance under the National Housing Act within sixty days from the date hereof (written statement of any officer of the Department of

Housing and Urban Development or authorized agent of the Secretary of Housing and Urban Development subsequent to the sixty days from the date of this Security Deed, declining to insure said note as this Security Deed, being deemed conclusive proof of such ineligibility the Grantee or the holder of the note may at its option, declare all sums secured hereby immediately due and payable.

13. That default in any of the covenants or conditions of this instrument or of the note secured hereby shall terminate the Grantor's right to possession, use, and enjoyment of the premises, at the option of the Grantee or assigns (it being agreed that the Grantor shall have such right until default). Upon any such default the Grantee shall become the owner of all of the rents and profits accruing after default as security for the indebtedness secured hereby, and this shall be true even though the Grantor be permitted to retain possession of the premises; and this instrument shall operate as an assignment of the rentals on said premises to that extent. Upon the happening of any such default the Grantee shall have the right to have a receiver appointed to take charge of such premises regardless of the solvency of the Grantor and regardless of whether or not the Grantee has an adequate remedy at law. The Grantor covenants and agrees that time is of the essence of this contract and that if he shall fail to pay said indebtedness, or any part thereof, when due, or shall fail to perform any covenant or agreement of this instrument or the note secured hereby, the entire indebtedness hereby secured shall immediately become due, payable, and collectible without notice, at the option of the Grantee or assigns, regardless of maturity, and the Grantee or assigns may enter upon said premises and collect the rents and profits thereof, and, before or after entry, may sell said property at auction at the usual place for conducting sales at the courthouse in the county where the land lies, in said State, to the highest bidder for cash, first giving 4 weeks' notice of the time, terms, and place of such sale, by advertisement once a week in a newspaper published in said county, all other notice being hereby waived by the Grantor

(and said Grantee or any person on behalf of said Grantee, or assigns, may bid and purchase at such sale), and thereupon execute and deliver to the purchaser at such sale a sufficient conveyance of said premises in fee simple, which conveyance shall contain recitals as to the happening of the default upon which the execution of the power of sale herein granted depends; and the said Grantor hereby constitutes and appoints the Grantee, or any agent or attorney of the Grantee, the agent and attorney-in-fact of said Grantor to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Grantee, or assigns, shall be binding and conclusive upon the Grantor, and the conveyance to be made by the Grantee, or assigns, shall be effectual to bar all equity of redemption, homestead, dower, courtesy, and all other exemptions of the Grantor, all of which are hereby expressly waived. In the event of a sale as hereinabove provided, the Grantor, or any person in possession under the Grantor, shall then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed, in accordance with the provisions of law applicable to tenants holding over. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

14. That the proceeds of any sale shall be applied:

First. To pay the costs and expenses of said sale, the expenses of protecting the property and an attorney's fee of Seventy-five Dollars ($75.00) or one per centum (1%) upon the amount of the sale, whichever sum shall be the greater.

Second. To pay the indebtedness hereby secured.

Third. To pay the surplus, if any, to the person or persons legally entitled thereto.

If the Grantor shall pay and discharge the note secured hereby, or any notes given in renewal or extension thereof, and shall pay such sums and shall discharge all taxes and liens and repairs and the costs, fees, and expenses of making, enforcing, and executing this Security Deed, then this deed shall be canceled and surrendered in accordance with the Civil Code of Georgia.

It is understood that if more than one person joins in the execution of this instrument as Grantor or if any be of the feminine sex, the pronouns and relative words used herein shall be read as if written in the plural or the feminine respectively.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals on the day and year aforesaid.

/s/ Bobby J. Armstrong [SEAL]

/s/ Delphine Armstrong [SEAL]

Signed, sealed, and delivered in the presence of:

..... Maddox

and witnessed by .... Hardnett

Notary Public, Georgia State at Large

My Comission Expires June 20, 1982

Security Deed Filed for Record: Book 4375 Page 409